

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Improving Public Safety Communications in the) WT Docket No. 02-55
800 MHz Band)

ORDER

Adopted: June 29, 2010

Released: June 29, 2010

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this *Order*, pursuant to delegated authority, we (1) postpone the 800 MHz rebanding financial reconciliation “true-up” date from June 30, 2010 to December 31, 2010, and (2) require the 800 MHz Transition Administrator (TA) to file a report by November 15, 2010, with its recommendation on whether the true-up date should occur on December 31, 2010, or be further postponed.

II. BACKGROUND

2. The true-up was established in the *800 MHz Report and Order* to assess the total creditable rebanding costs incurred by Sprint Nextel Corporation (Sprint) for both 800 MHz rebanding and relocating of Broadcast Auxiliary Service (BAS) licensees in the 1.9 GHz band, and to compare these costs to the value of the 1.9 GHz spectrum that the Commission awarded to Sprint.¹ If the true-up shows the value of the 1.9 GHz spectrum to exceed Sprint’s combined 800 MHz and BAS relocation costs, Sprint must pay the difference in an “anti-windfall” payment to the U.S. Treasury.²

3. The *800 MHz Report and Order* originally required Sprint to complete 800 MHz rebanding in non-border areas within thirty-six months³ and provided that the true-up would occur within six months thereafter.⁴ The thirty-six month rebanding period expired on June 26, 2008, at which time neither 800 MHz rebanding nor BAS relocation was complete.⁵ Accordingly, on June 25, 2008, Sprint requested that the true-up – which was scheduled to occur on December 26, 2008 – be postponed indefinitely until both 800 MHz rebanding and BAS relocation were complete.⁶ Noting that both rebanding projects had been subject to unforeseen complexity and delay, Sprint contended that conducting the true-up as scheduled would be premature and would fail to account for significant rebanding costs that Sprint had yet to incur.⁷

¹ Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15124 ¶ 330 (2004) (*800 MHz Report and Order*).

² *Id.*

³ *Id.* at 14977 ¶ 11.

⁴ *Id.* at 15124 ¶ 330.

⁵ Improving Public Safety Communications in the 800 MHz Band, *Fourth Memorandum Opinion and Order*, 23 FCC Rcd 18512, 18514 ¶ 9 (2008) (*Fourth Memorandum Opinion and Order*).

⁶ *Id.* at 18512 ¶ 1.

⁷ *Id.* at 18513-14 ¶ 6.

4. In its December 2008 *Fourth Memorandum Opinion and Order*, the Commission granted Sprint's request in part and extended the true-up date from December 26, 2008 until July 1, 2009.⁸ The Commission found that circumstances had changed since the establishment of the initial true-up schedule, and that neither 800 MHz rebanding nor BAS relocation had progressed sufficiently to justify conducting the true-up as originally scheduled. However, the Commission declined to postpone the true-up indefinitely, noting that Sprint could incur sufficient creditable costs before the completion of rebanding to allow the true-up to proceed.⁹ The Commission therefore extended the true-up date until July 1, 2009, and directed the TA to file a report by May 1, 2009, with its recommendation on whether rebanding had progressed sufficiently that the true-up should be conducted on July 1, 2009, or whether it should be further postponed.¹⁰ The Commission also delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to consider and grant further extensions of the true-up deadline based on the TA's recommendation.¹¹

5. The TA filed its report on May 1, 2009, recommending that the true-up be postponed until December 31, 2009, and that the TA file a report by November 1, 2009, with its further recommendation on whether rebanding has made sufficient progress to proceed with the true-up or whether the true-up should again be postponed.¹² On June 24, 2009, the Bureau issued an order deferring the true-up until December 31, 2009, and directed the TA to file a report by November 2, 2009, with its recommendation on whether the true-up should occur on December 31, 2009 or be further postponed.¹³

6. On November 2, 2009, the TA filed its report recommending that the true-up date be further extended from December 31, 2009 until June 30, 2010.¹⁴ The TA stated that "[s]ince the Commission released its *True-Up Deferral Order*, there has been an incremental increase in the 800 MHz reconfiguration expenditures. A substantial number of licensees, however, have yet to complete rebanding and a true-up as of December 31, 2009, would fail to take into account a large portion of Sprint Nextel's eventual cost obligation."¹⁵ On December 22, 2009, the Bureau issued an order deferring the true-up until June 30, 2010, and directed the TA to file a report by May 31, 2010, with its recommendation on whether the true-up should occur on June 30, 2010 or be further postponed.¹⁶

⁸ *Id.* at 18512 ¶ 1.

⁹ *Id.* at 18515 ¶ 11.

¹⁰ *Id.* at ¶ 12.

¹¹ *Id.*

¹² Recommendation to Postpone 800 MHz Rebanding Financial True-Up, WT Docket 02-55, filed May 1, 2009 by the 800 MHz Transition Administrator, LLC, at 2. (First True-Up Report)

¹³ See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 24 FCC Rcd 8410 (PSHSB 2009) (*True-Up Deferral Order*).

¹⁴ Recommendation to Further Postpone 800 MHz Rebanding Financial True-Up, WT Docket 02-55, filed November 2, 2009 by the 800 MHz Transition Administrator, LLC, at 1 (Second True-Up Report). The TA further recommended as part of the true-up process that the TA have six months from the financial true-up date to submit a final true-up report to the Commission. Therefore, unless further extended, the true-up would be performed based on expenditures as of June 30, 2010, with the final true-up report issued to the Commission by December 31, 2010. *Id.* at n. 2.

¹⁵ *Id.* at 1.

¹⁶ See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 24 FCC Rcd 14642 (PSHSB 2009) (*Second True-Up Deferral Order*).

7. On May 25, 2010, the TA filed its third True-Up Report recommending that the true-up date be further extended from June 30, 2010 until December 30, 2010.¹⁶ The TA reiterated its belief “that based on progress to date of both 800MHz rebanding and the BAS relocation it would be premature for the TA to conduct the required financial true-up because it would fail to take into account a large portion of Sprint Nextel’s eventual cost obligation.”¹⁷

III. DISCUSSION

8. The Bureau has previously found that, based on the progress to date of both 800 MHz rebanding and the BAS relocation, it would be premature for the TA to conduct the true-up because it would fail to take into account a large portion of Sprint Nextel’s eventual cost obligation.¹⁸ The TA has indicated that, despite additional progress in rebanding since then, Sprint Nextel has still not incurred sufficient rebanding expenditures to warrant moving forward with the true-up at this time.¹⁹ We agree with the TA’s analysis. While continued progress has been made in 800 MHz rebanding, a substantial number of licensees has yet to complete the process.²⁰ Therefore, we conclude that a true-up of Sprint’s rebanding expenditures as of June 30, 2010, would be premature because it would fail to take into account a large portion of Sprint’s eventual cost obligation.

9. We therefore extend the true-up date until December 31, 2010, and direct the TA to file a report by November 15, 2010, with its recommendation on whether the true-up should be conducted based on rebanding expenditures incurred by Sprint as of December 31, 2010, or be further postponed. Should the true-up be conducted based on expenditures as of December 31, 2010, the TA shall submit its final true-up report by June 30, 2011. We emphasize that our action with respect to the true-up date is intended to have no impact on any other aspect of the timetable for either 800 MHz rebanding or BAS relocation.

IV. ORDERING CLAUSES

10. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.191, 0.392, and 90.677 of the Commission’s rules, 47 C.F.R. §§ 0.191, 0.392, 90.677, IT IS ORDERED that, unless further extended, the true-up ordered in the *Fourth Memorandum Opinion and Order* SHALL BE CALCULATED based on rebanding expenditures by Sprint Nextel Corporation as of December 31, 2010.

11. IT IS FURTHER ORDERED that, unless the true-up is further extended, the 800 MHz Transition Administrator SHALL FILE its final true-up report by June 30, 2011.

¹⁶ See Recommendation to Further Postpone 800 MHz Rebanding Financial True-Up, WT Docket 02-55, filed May 25, 2010 by the 800 MHz Transition Administrator, LLC, at 2 (Third True-Up Report). Once again, the TA recommended that it receive six months from the financial true-up date to submit a final true-up report to the Commission. Therefore, unless further extended, the true-up would be performed based on expenditures as of December 31, 2010, with the final true-up report issued to the Commission by June 30, 2011. *Id.* at n. 2.

¹⁷ *Id.* at 2.

¹⁸ See *Second True-Up Deferral Order*, 24 FCC Rcd at 14643 ¶ 6.

¹⁹ Third True-Up Report at 2.

²⁰ 800 MHz Transition Administrator, LLC Quarterly Progress Report for the Quarter Ended December 31, 2009, filed March 25, 2010 at 1.

12. IT IS FURTHER ORDERED that the Transition Administrator SHALL FILE in this docket its recommendation on further extension of the true-up date by November 15, 2010.

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief
Public Safety and Homeland Security Bureau